

NOTICE OF ADOPTION OF EMERGENCY REGULATIONS

California Code of Regulations
Title 15, Crime Prevention and Corrections
Division 3, Department of Corrections

AUTHORITY:

Under authority established in Penal Code (PC) Section 5058, the Director of Corrections has changed Title 15 of the California Code of Regulations by adopting emergency regulations to incorporate into the Director's Rules modified administrative rules affecting employee use of force.

REFERENCE:

These regulations are amended to implement, interpret, and/or make specific Civil Code Section 50; PC Sections 149, 195, 196, 198, 830, 830.5, 835, 835a, 2651, 2652, 2652.5, and 5054; *Tennessee v. Garner* (1985) 475 U.S. 321, 105 S.Ct. 1694, and *Whitley v. Albers* (1985) 475 U.S. 312, 105 S.Ct. 1078.

PUBLIC HEARING:

Date and Time: June 14, 1999 at 9:00 a.m.

Place: Water Resources Building Auditorium
1416 Ninth Street
Sacramento, California 95814

Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD:

The public comment period will close June 14, 1999, at 5:00 p.m. Any person may submit written comments about the proposed changes. To be considered by the Department, comments must be received at the Department of Corrections, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001, before the close of the comment period.

CONTACT PERSON:

Please direct any inquiries regarding this action to Peggy McHenry, Chief, Regulation Management Unit, Department of Corrections, P.O. Box 942883, Sacramento, CA 94283-0001 or telephone (916) 324-7770.

ASSESSMENTS, MANDATES AND FISCAL IMPACT:

This action will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

The Department determines this action imposes no mandates on local agencies or school districts; no fiscal impact on local government, or Federal funding to the State, or private persons. It is also determined that this action will not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states, because they are not affected by the internal management of State prisons; or on housing costs; and no costs or reimbursements to any local agency or school district within the meaning of Government Code Section 17561. This action will not affect small businesses because they are not affected by the internal management of State prisons. However, it will impact state government due to a one-time training cost estimated at approximately \$128,800.00. To offset these costs, some long-term savings may occur in reduced litigation and the avoidance of injury and death related to the use of force in prisons.

DETERMINATION:

The Department must determine that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective and less burdensome to affected persons.

AVAILABILITY OF PROPOSED TEXT AND ISR:

The text of the emergency regulation, the Initial Statement of Reasons and other related material are available upon request directed to the Department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

If any substantial and sufficiently related changes are made to the text as a result of comments received during the public comment period, the Department will make the full text of the changed regulation available for at least 15 days before the date the regulation is permanently adopted.

INFORMATIVE DIGEST:

PC Section 5054 vests with the Director the supervision, management and control of the prisons, and the responsibility for the care, custody, treatment, training, discipline and employment of inmates. PC Section 5058 authorizes the Director to prescribe and amend regulations for administration of prisons.

These regulations provide practical guidance for correctional officers who must make grave decisions regarding the use of deadly force under the most trying of circumstances. This policy is also intended to achieve uniformity among the various departmental components and facilities, which previously had interpreted the existing policy in different manners. The independent Select Shooting Review Panel's *Findings and Recommendations* issued in October 1998 concluded that 77% of the 31 shootings reviewed were not justified. It is imperative that clearer policy direction be given to field staff immediately. The proposed regulation changes are intended to provide clarity in this area.

Peace officers' use of force is restricted by various statutes in the California Penal Code, the Constitution, the federal Civil Rights Act and by court cases interpreting them. As a policy matter, the Department has chosen to set its use of force and deadly force policies at a conservative level, that of the "objective" reasonable "trained competent correctional employee." This is calculated to satisfy or exceed all applicable legal standards.

The new policy defines key terms including "reasonable force" by a correctional employee. It enumerates the types of techniques staff are permitted to use in effecting order and control. It limits use of force to the level necessary to accomplish legitimate penological aims, e.g. maintain order of facilities and control over inmates, prevent harm to self or other persons, and to prevent escapes. It limits the use of restraints. Lastly, it clarifies necessary employee reporting in all prison or facility situations involving use of force, and the use of deadly force even while off-duty.

In summary, the purpose of this action is to establish policies and procedures to implement clear and uniform restrictions on use of force by correctional employees, as well as to notify staff, inmates and the affected public of these policies.

The operational needs of the Department of Corrections require the proposed adoption of Sections 3268, 3268.1 and 3268.2, the amendment of Sections 3270, 3271, 3272, 3273, 3274, 3275, 3276, and 3278, and the repeal of Sections 3277, 3279, 3280 and 3281 of the California Code of Regulations, Title 15, Division 3, be adopted on an emergency basis pursuant to Penal Code Section 5058(e). The regulations will take effect on April 1, 1999.